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Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Ginganet Co., Ltd.

Serial No. 76508364

Marilyn Matthes Brogan of Frommer Lawrence & Haug LLP for  
Ginganet Co., Ltd.

Sonya B. Stephens, Trademark Examining Attorney, Law Office  
108 (Andrew Lawrence, Managing Attorney).

Before Hohein, Hairston and Bucher, Administrative  
Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Ginganet Co., Ltd., a Japanese Corporation, seeks  
registration on the Principal Register of the mark  
**TELEPORT** for goods recited in the application, as amended,  
as follows:

"telecommunications apparatus and electronic  
information transmission apparatus, namely,  
telephone apparatus, wire communication  
apparatus, carrier equipment, broadcasting  
apparatus, wireless communication apparatus,  
applied radio apparatus, telemetering and  
remote control apparatus, audio frequency  
apparatus, and component parts thereof  
computer hardware for use in  
telecommunications and electronic

information transmission; software for use in database management, for use in remote education, for use in linguistic education, for use with spreadsheets and for use in word processing; blank and pre-recorded magnetic data carriers, magnetic card apparatus and magnetic cards for use in telecommunications and electronic information transmission" in International Class 9.<sup>1</sup>

This case is now before the Board on appeal from the final refusal of the Trademark Examining Attorney to register such designation based upon the ground that the term is merely descriptive when considered in relation to applicant's identified goods, i.e., that the term TELEPORT immediately informs potential purchasers about the features and functions of applicant's goods.

Both applicant and the Trademark Examining Attorney have fully briefed this appeal, but applicant did not request an oral hearing before the Board. We affirm the refusal to register.

A mark is merely descriptive, and therefore unregistrable pursuant to the provisions of Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), if it immediately conveys information of significant ingredients, qualities, characteristics, features, functions, purposes

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<sup>1</sup> Application Serial No. 76508364 was filed on March 31, 2003 based upon applicant's allegation of a *bona fide* intention to use the mark in commerce.

or uses of the goods or services with which it is used or is intended to be used. A mark is suggestive, and therefore registrable on the Principal Register without a showing of acquired distinctiveness, if imagination, thought or perception is required to reach a conclusion on the nature of the goods or services. See In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).

The question of whether a particular term is merely descriptive is not decided in the abstract. Rather, the proper test in determining whether a term is merely descriptive is to consider the mark in relation to the goods or services for which registration is sought, the context in which the mark is used or is intended to be used, and the significance that the mark is likely to have on the average purchaser encountering the goods or services in the marketplace. See In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978); In re Intelligent Instrumentation Inc., 40 USPQ2d 1792 (TTAB 1996); In re Consolidated Cigar Co., 35 USPQ2d 1290 (TTAB 1995); In re Pennzoil Products Co., 20 USPQ2d 1753 (TTAB 1991); In re Engineering Systems Corp., 2 USPQ2d 1075 (TTAB 1986); and In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979).

Applicant maintains that while the involved mark may impart some information to the prospective purchasers about applicant's goods, and hence may well be suggestive of its goods, it is not descriptive of them. Applicant argues that when prospective consumers view this mark, they would need to exercise some imagination or thought to obtain any direct message about the electronic goods offered by applicant – that the term "Teleport" does not forthwith convey any immediate idea of the various electronic goods offered by applicant:

[W]hile the mark TELEPORT might be reasonably thought to suggest that the product to which it applies has to do with telephones, or telecommunication, or the like; nonetheless, the mark requires the consumer to exercise imagination in order to draw a conclusion as to the nature of Applicant's electronic goods.

Applicant's appeal brief, p. 5.

In further support of its position, applicant argues that the record does not show that any of applicant's competitors "either want or need to use the term in question in order to describe their electronic goods." Applicant contends that this term is not merely descriptive because "the mark is just as likely to conjure up some arbitrary connotation" that is completely unrelated to applicant's goods. "For example, TELEPORT might bring to

mind transportation, time travel, or various services available only in the realm of science fiction."

Applicant's appeal brief, p. 6.

By contrast, the Trademark Examining Attorney begins with the dictionary definitions of the word "teleport" made of record, namely, that it refers to a "telecommunications network that provides access to communications satellites and other long distance media; telecommunications hub"<sup>2</sup> and "a satellite communication system that beams data into outer space."<sup>3</sup> She goes on to argue as follows:

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<sup>2</sup> [www.infoplease.com](http://www.infoplease.com)

<sup>3</sup> [www.netlingo.com](http://www.netlingo.com).

We also take judicial notice of the relevant portions of additional entries from three other sources corroborating those definitions placed into the record by the Examining Attorney:

**teleport** (1) A project developed by the Port Authority of New York and New Jersey, Merrill Lynch & Company, and the Western Union Corporation to provide the New York City metropolitan area with satellite communications.

(2) A generic reference to a facility capable of transmitting and receiving satellite signals for other users. JONES CABLE TELEVISION AND INFORMATION INFRASTRUCTURE DICTIONARY (4<sup>th</sup> Ed. 1994).

**Teleport:** ►n. 1 a center providing interconnections between different forms of telecommunications, esp. one that links satellites to ground-based communications. [ORIGIN: 1980's: originally the name of such a center in New York.] 2 an act of teleporting. THE NEW OXFORD AMERICAN DICTIONARY (2001).

**teleports** The definition written by Gary Stix in the August 12, 1986 issue of COMPUTER DECISIONS reads, "High bandwidth telecommunications distribution systems that allow major local users to obtain local, private services and long distance services. The most notable example is the New York Teleport," which is located on Staten Island. Teleports traditionally consist of two things - a fiber optic / coaxial cable network around a city and a

[A]pplicant's goods are broadly-identified telecommunications and electronic goods. Such goods are identified so broadly that they could clearly be used to either access or comprise a "teleport" (i.e., be used to access or comprise a "telecommunications network that provides access to communications satellite and other long distance media" and/or telecommunications hub" and/or be used to access or comprise "a satellite communication system that beams data into outer space").

Trademark Examining Attorney's appeal brief, p. 7.

Accordingly, she concludes that applicant's proposed mark describes a characteristic, function and/or purpose of the identified goods.

The dictionary entries contained within the record do contain references to "teleportation" as a hypothetical method of transportation in which matter is dematerialized at one point and recreated at another. However, in the context of applicant's "telecommunications apparatus and electronic information transmission apparatus ..., " the appropriate meaning we focus on is related to satellite communications. In this setting, teleports are the ground-based side of the global satellite network. They combine

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collection of nearby satellite antennas. The cable network collects transmissions from larger customers and takes them to the antennas for shipping to and from distant offices. Teleport companies are now more successful as local communications companies than they are as long distance gateways.... NEWTON'S TELECOM DICTIONARY (19<sup>th</sup> Ed. 2003).

the power of geosynchronous satellites positioned in space with high-speed terrestrial fiber.

Applicant's goods are also identified broadly enough that based solely upon the limited record in this case (e.g., dictionary definitions), it is reasonable to assume that, in reality, the various components identified in the instant application (e.g., apparatus, equipment, media and software) would be compatible with the needs of enterprises operating the ground-based portion of global satellite networks.

Moreover, we note that there are no limitations on the channels of trade for applicant's goods. The classes of customers of applicant's broadly-identified "telecommunications apparatus and electronic information transmission apparatus," specifically "computer hardware for use in telecommunications and electronic information transmission," could well include companies that operate teleports. Applicant's highly technical goods, on their face, certainly do not appear to be the type of electronic products that would be marketed to ordinary retail consumers. In fact, quite the opposite appears to be true. The type of electronic products listed most likely would be directed to highly-trained and knowledgeable persons in the

telecommunications field. To such persons, the term, TELEPORT, would "forthwith convey an immediate idea" of the function, nature or characteristics of the involved goods. This is a more precise piece of information than simply that "the mark TELEPORT might be reasonably thought to suggest that the product to which it applies has to do with telephones, or telecommunication, or the like." Applicant's brief, p. 5. Moreover, seeing the word TELEPORT in connection with sophisticated telecommunications components is most unlikely to conjure up "transportation, time travel, or various services available only in the realm of science fiction" (applicant's brief, p. 6) in the minds of telecommunications professionals.

The prototypical services of commercial companies that operate teleports include audio/video production and postproduction, requiring "broadcasting apparatus"; distance learning, requiring "software for use in remote education"; remote measuring using satellite technology, requiring "telemetry and remote control apparatus"; the resale of bandwidth on satellite transponders, fiber circuits or microwave networks, requiring "telephone apparatus, wire communication apparatus, carrier equipment,



broadcasting apparatus, wireless communication apparatus"; up-linking and down-linking with the accompanying amplification, modulation, encryption and related processes, requiring "software for use in electronic information transmission"; and format conversion, requiring "software for use in database management, for use in linguistic education, for use with spreadsheets and for use in word processing; blank and pre-recorded magnetic data carriers, magnetic card apparatus and magnetic cards for use in telecommunications."

It is highly likely that any vendors of "telecommunications apparatus and electronic information transmission apparatus, namely, telephone apparatus, wire communication apparatus, carrier equipment, broadcasting apparatus, wireless communication apparatus, applied radio apparatus, telemetering and remote control apparatus, audio frequency apparatus, and component parts thereof computer hardware for use in telecommunications and electronic information transmission; software for use in database management, for use in remote education, for use in linguistic education, for use with spreadsheets and for use in word processing; blank and pre-recorded magnetic data carriers, magnetic card apparatus and magnetic cards for

use in telecommunications and electronic information transmission" who are competing with applicant should also be free to use the words "teleport" in a highly-descriptive manner in connection with their goods.

Accordingly, following the urging of applicant, irrespective of which test we employ to divine the line between suggestive marks and merely descriptive terms<sup>4</sup> -- the "imagination test," the query about whether or not one needs to exercise "mature thought or follow a multi-stage reasoning process," or a "competitive need" test, etc., -- we find that this term is merely descriptive of the identified goods.

*Decision:* The refusal to register based upon Section 2(e)(1) of the Lanham Act is hereby affirmed.

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<sup>4</sup> 2 J. Thomas McCarthy, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION, § 11.71 (4th ed. 2001).